**IN THE HIGH COURT OF JUDIATURE AT BOMBAY**
**CIVIL APPELLATE JURISDICTION**

CIVIL APPLICATION NO.3461 OF 2004
IN
**FIRST APPEAL NO.901 OF 2003**

M/s.Madhav Enterprises .. Applicants.

Versus

Murud Taluka Supari Kharedi
& Vikri Sangh Ltd. .. Respondents.

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Ms.Gauri Godse for the applicants.

Mr.P.S.Dani for the respondents.

**CORAM : S.B.MHASE &**
**D.B.BHOSALE, JJ.**

**DATE : JANUARY 13, 2005.**

**P.C.**

1. Heard Ms.Gauri Godse, learned counsel for the applicants and Mr.P.S.Dani, learned counsel for the respondents.

2. This is the second application for extension of time which has been provided in the consent decree passed in First Appeal No.901 of 2003 on 25.11.2003. The initial decree is for Rs.42,00,000/- and interest, which was passed by the Civil Judge, Senior Division, Alibag in Special Civil Suit No.1 of 2001. As against the said

decree, the present applicants/appellants have preferred the above referred First Appeal. In this first appeal, by consent decree, it was agreed that Rs.35,00,000/- will be accepted by the respondents in full satisfaction of the decree provided the applicants/appellants deposit the amount of Rs.35,00,000/- within a period of six months. It was further agreed between the parties that the applicants/appellants are restrained from transferring, alienating, creating third party rights and parting with possession of godown No. C-18 of B.A.P.M.C. Complex, situated at Market No.2, Phase 1, Turbhe, Navi Mumbai and this injunction was to remain in force till the amount of Rs.35,00,000/- is deposited in this Court, with due notice to the respondents. As per above referred terms, it was permissible for the applicants/appellants to negotiate with third party in respect of sale of the property. If the amount is deposited as stipulated, the Registrar General was directed to pay the said amount to the respondents. On deposit of the amount, the order of injunction shall cease to operate and the applicants/appellants will be free to transfer the property and handover possession to the purchaser. The decree further provided that in case the applicants/appellants did not deposit the amount as

directed, the respondents shall be entitled to the full decretal amount as per the decree passed by the Trial Court and in that event, the above referred property shall stand attached and the attachment shall continue during the execution of the decree. The learned counsel for the respondents have made a statement that the respondents shall write a letter with a copy of the said order informing B.A.P.M.C. that the respondents have no objection in the appellants selling above referred property in terms of the order. The learned counsel made a statement on the instructions from the Chairman of the respondent-Society that such letter shall be sent to B.A.P.M.C. within a period of two weeks from today (from the date of order).

3. What we find is that the statement was made by the learned counsel for the respondents to facilitate transaction of sale of the said godown by the applicants/appellants. However, that was not exactly a term of the agreement and no consequence follow from violation of the said terms.

4. Factually, the application for no objection have been given by the respondent-Society on

25.1.2004. The period of six months for depositing the amount was to expire on 24th May, 2004 and, therefore, even though "no objection" application is not submitted within a period of two weeks, however, it was submitted well in advance prior to expiry of six months. However, the fact remains that prior to 24th May, 2004 i.e. within a period of six months from the date of consent decree the amount of Rs.35,00,000/- has not been deposited in this Court. Thereafter the application bearing No.1463 of 2004 was brought for extension of time. After hearing the parties this court has extended time upto 30th September, 2004 by the order dated 24.7.2004. The order was passed after hearing the parties and taking into consideration the contentions of the parties. Mr.Dani, learned counsel for the respondents states that since the letter was delayed on the part of the respondents, they have not objected for extension of time.

5. In this application, the case is made out which was also made out in earlier application, that in December 2003 one party by name M/s.Maniklal Ramji and Co. had agreed to purchase the said property. However, due to non availability of no objection from the respondents the transaction was not finalised and now even

though no objection letter has been issued because of the pending litigation nobody is coming forward. However, on this ground earlier extension has been granted. Thereafter what has happened is not reflected from the application seeking further extension of time. The learned counsel for the applicants/appellants submitted that since the said no objection was not given, there are no parties available and, therefore, the extension of time is very much necessary. Mr.Dani, learned counsel for the respondents states that now he has objection for extension of time. He states that as a result of non deposit of amount of Rs.35,00,000/- within a period of six months and as per earlier extended time now the decree as passed by the trial court has become enforceable as per the consent terms under which the respondents are entitled to get amount of Rs.42,00,000/- with interest. He submitted that the facility which was made available to the applicants/appellants by way of concession given at the time of passing consent decree has not been availed of by the applicants/appellants and they are now trying to protract execution of the said decree by getting extension from this Court. He submitted that as per amended provisions of section 148 of the Civil Procedure Code, even though the Court has power to

extend time, the extension beyond one month cannot be granted. In order to counter this argument it is submitted that the application of the applicants/appellants is not under section 148 of the Civil Procedure Code but it is under section 151 of the Civil Procedure Code and it is submitted that it is just and proper to extend the time in the facts and circumstances of the case.

6. Even though one extension has been granted by this Court earlier what we have noticed is that in December 2003 M/s.Maniklal Ramji had agreed to purchase the property is the matter within the knowledge of the applicants/appellants. What was agreed price and terms of agreement have not been disclosed. Apart from that if the purchaser was available and the transaction could not be proceeded with but for no objection application from the respondents, it was equally obligatory for the applicants/appellants to inform the respondents that there is a buyer available and the transaction has been finalised and please extend no objection letter as per the statement made before the Court at the time of passing consent decree. Conspicuously, it is not case of the applicants/appellants that at any point of time in December 2003 when they had a buyer for the said

property they informed the respondents that please issue no objection or certificate as per the statement made before this Court. Probably, had that been the case it would have placed the applicants/appellants on stronger footing. But apart from that taking benefit of this case one extension has already been granted. This is the second application for extension of time and no new ground has been made out. There are no efforts made thereafter to dispose of the property. Apart from that what we find is that six months time that was granted for deposit of the amount of Rs.35,00,000/- has nothing to do with the sale of the property. On the contrary, there was injunction from alienating the said property which culminated into attachment of the said property in case the amount is not deposited within six months. However, concession has been given in favour of the applicants/appellants that they may negotiate in respect of the said property, however, that does not mean that the amount will be deposited only after sale of the property. Reading total consent terms, deposit of amount of Rs.35,00,000/- within a period of six months was irrespective of the fact whether sale takes or does not take place of the above referred godown. Therefore, what we find at this stage is that the day on which we are

considering extension of time there is a right created in favour of the respondents of recovering the decretal amount as passed by the trial court. Such a valuable right which is available to the respondents cannot be disallowed due to procedural technicalities, and above all we find that section 148 is not applicable since the Court cannot extend period for more than one month. Section 151 will not help in such situation. Section 151 cannot be used to eliminate the provisions which have been specifically provided for extension of time. In short what we find that the application is without any merits and deserves to be rejected and is accordingly rejected.

**(D.B.Bhosale, J.)** **(S.B.MHASE, J.)**

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